



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2018-0559; FRL-9987-78-Region 9]

Air Plan Approval; California; Feather River Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Feather River Air Quality Management District (FRAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of oxides of nitrogen (NO_x) from natural gas-fired water heaters, small boilers, and process heaters. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2018-0559. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR**

FURTHER INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Robert Schwartz, EPA Region IX, (415) 972-3286, *schwartz.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to the EPA.

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I. Proposed Action

On October 3, 2018 (83 FR 49870), the EPA proposed to approve the following rule into the California SIP.

Local Agency	Rule #	Rule Title	Adopted	Submitted
FRAQMD	3.23	Natural Gas-Fired Water Heaters, Small Boilers, And Process Heaters	10/03/2016	05/08/2017

We proposed to approve this rule because we determined that it complies with the relevant CAA requirements. Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received five (5) comments supporting the limitation of NO_x emissions. One commenter asked, "If this is approved what kind of program will be provided to replace these systems to ones that follow code?" In response, there is no EPA-sponsored program to replace currently installed natural-gas fired water heaters, small boilers or process heaters. The FRAQMD Rule 3.23 prohibits any person in the District to offer for sale, sell, or install applicable units that exceed the NO_x emission limits established by the rule. Resellers or manufacturers of any unit subject to Rule 3.23 will be required to submit to the FRAQMD a report that demonstrates compliance with the NO_x emission limits established by the rule. Alternatively, the reseller or manufacturer of any unit subject to Rule 3.23 will have the option to submit to the FRAQMD an approved South Coast Air Quality Management District (SCAQMD) certification, in accordance with SCAQMD Rule 1121 or Rule 1146.2.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving this rule into the California SIP.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the FRAQMD rules described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in

the “**FOR FURTHER INFORMATION CONTACT**” section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR

43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the

U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: November 30, 2018.

Deborah Jordan,
Acting Regional Administrator,
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Subpart F – California

2. Section 52.220 is amended by adding paragraph (c)(509)(i)(B) to read as follows:

§52.220 Identification of plan-in part.

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(c) * * *

(509) * * *

(i) * * *

(B) Feather River Air Quality Management District.

(1) Rule 3.23, “Natural Gas-Fired Water Heaters, Small Boilers, and Process Heaters” adopted on October 3, 2016.

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